

STRONG REFUSES EVIDENCE FOUND BY 'PHONE SPIES

Best to Falter in Truth Hunt than Jeopardize Society, He Says.

DOUBTS LEGALITY OF TESTIMONY

Words Gleaned from Farrell and Potter Turned Back to Hotchkiss—Mitchel to Push On.

Charles H. Strong, commissioner in charge of the charities investigation, awarded yesterday the entire mass of intercepted evidence procured by wire tapping and submitted to him by William H. Hotchkiss, counsel for the Department of Public Charities.

"It is best to falter in the search for truth," he said, "when success in the search cannot be attained without jeopardizing the ulterior interests of society at large."

The fifty-four exhibits, consisting of conversations tapped by the police from the telephones of the Rev. William H. Farrell, the Rev. D. C. Potter and Dean Potter, his son, were thrown out of the inquiry, and the opinion rendered by the commissioner was added to the record of investigation.

On the surface this action of the commissioner might be construed as a partial victory for Father Farrell and the others whose wires were tapped, but apparently it has not disturbed Mayor Mitchell, Police Commissioner Woods, Commissioner Kingsbury and those who participated in the actual tapping of the clergyman's wires.

After the exhibits accompanied by Commissioner Strong's report had been received by Mr. Hotchkiss he said he had no comment to make upon the commissioner's action. Mr. Hotchkiss said last night he did not know what Mr. Strong meant by "ulterior."

Mitchel to Fight On.

It was learned, however, that Mayor Mitchell and those associated with him in the espionage upon the Brooklyn wires were determined to go ahead with their side of the controversy regardless of the findings of Commissioner Strong.

The wire tapping, it is understood, was insisted for four reasons, all of which have been recorded in the minutes of the investigation.

The first was a belief that an attempt was being made to induce the Governor to revoke or recall the commission; secondly, that an attempt had been made to discredit the commission; third, that an effort was afoot to spirit away witnesses from the jurisdiction of the courts and the commission, and finally, that an attempt was being made to intimidate witnesses as to what they should and should not say while testifying before the commission.

Police Commissioner Woods intimated that the accumulation of evidence

FLAG MARCH TO CELEBRATE PETER MINUIT'S LANDING.



School children bearing the national banner and the city flag which Borough President Pounds accepted in Battery Park for the municipal government.

procured by the police in the belief that a crime was about to be committed would continue, but he would not say whether there was to be more wire tapping.

Commissioner Strong's Refusal.

In his opinion Commissioner Strong said in part:

"Council for the Department of Public Charities asks me to receive in evidence the fifty-four exhibits, consisting of memoranda of certain alleged telephone conversations, or to permit the police officers who made these memoranda to use the same on the witness stand in refreshing their recollection of such conversations. Counsel for the state board objects to any use of these memoranda, upon the ground that the rights of certain persons under the Constitution and laws of the state have been invaded in acquiring this information. In this objection he is joined by counsel for three persons whose telephone wires were tapped by the police."

"When these memoranda were offered in evidence, I received the first in obedience to what has been regarded as a general rule in the law of evi-

dence, applicable alike to criminal and civil causes. This rule has been to the effect that evidence will be received by a court even though it may consist of papers that may have been illegally taken from the possession of the party against whom they are offered, or otherwise unlawfully obtained.

Limitation on Evidence.

"Since I received the evidence referred to, my attention has been called to a limitation upon, rather than an exception to, the general rule to which I have referred. This limitation has found expression in judicial decisions to the effect that evidence obtained by public officers in opening sealed letters and packages sent through the mails is inadmissible. A citizen has not, of course, that right of property in the use of the wires of a private telephone company that he has in the use of the mails. At any rate, it has not been held that the seizure of a telephone message may be a taking of property without due process of law as the seizure of a sealed letter in the mails is held to be."

"Counsel for the persons whose

wires were tapped contends that their rights have been invaded, that a crime has been committed in obtaining the information and makes prompt demand for the papers. The papers, these memoranda of conversations, are, of course, not theirs; they never were in possession or otherwise. But it is not within the power of a commissioner, whatever his personal views may be, to determine whether the rights of these persons have been violated and whether a crime has been committed.

"I am advised that that question is now in the course of presentation by the District Attorney in Kings County to the grand jury. If a competent tribunal determines a crime has been committed in obtaining this information, then the question would remain whether the evidence thus wrongfully obtained should be received by me under the general rule referred to, or excluded under the limitation thereupon."

District Attorney Lewis, of Kings County, examined four witnesses before the grand jury. The Rev. D. C. Potter told of the tapping of his wires, and a manager from the telephone company and two wire chiefs testified regarding the mechanical work of the tapping. They were called, Mr. Lewis said, to assist in establishing the fact that the wire tapping was actually done in Brooklyn.

7 HOUSE OF REFUGE BOYS HELD FOR DEATH

Six Confess They Beat Engineer—All Charged with Murder.

The death yesterday of George Pleaser, assistant engineer at the Randall's Island House of Refuge, has led Coroner Feinberg to hold seven boys inmates of the house without bail pending the inquest. They are in jail, charged with murder.

Pleaser died of injuries received on the night of April 29. The boys are accused of having attacked him in an attempt to escape by way of the boiler room, where he was working. The prisoners admitted they had beaten Pleaser, robbed his clothing of the keys, stolen his pocketbook and bound him when unconscious.

Charles McCarthy, eighteen, of 1 Duffield Street, Brooklyn, is the supposed ringleader of the gang. McCarthy admitted giving the signal for the attack and striking the first blow with a coal shovel. All but one of the prisoners confessed. Charles Barada, of 223 East Eighty-first Street, denied participation, declaring he would have been released in ten weeks.

The other prisoners are Peter Rounds, of 37 Prospect Avenue, Brooklyn; William Retty, of 234 West Sixty-seventh Street; Albert Smith, of 615 East Eleventh Street; Benjamin Molitor, of Jamestown, N. Y.; and William Dwyer, of 507 East Eighty-second Street.

ELLIOTT FOUND NEAR SCENE OF KILLING

Alleged Slayer of Farmer and Daughter Hid in Barn.

Thompson, Conn., May 4.—John Elliott, sought for two days by police as the alleged murderer of Miss Sybil Bettis, a school teacher, and her father, was captured to-day hiding in a carriage shed on the farm of Roland Mills, only one and a half miles distant from the scene of the killing. Elliott, who was armed with two revolvers, was in a half stupor when arrested by Deputy Sheriff William F. Bates.

One of Elliott's eyes was almost closed and he was cut about the forehead and scalp.

Weak and exhausted, the hunted man made no resistance when the farmer arrived with the deputy sheriff. He was arraigned before a justice of the peace here on a charge of murder, and was ordered held in the Windham County jail pending action by the grand jury. Physicians who examined the prisoner believe his skull is fractured and that he will not live to stand trial. His mind is a blank on the shooting.

BATTERY'S FLAG HONORS MINUIT

Schools and Officials Celebrate "Landing of the Dutch Settlers."

HOLLAND SOCIETY SAYS DATE IS WRONG

Cites Historians to Show 200 Persons Were Living Here on May 4, 1626.

Raising the city flag on the pole at the Battery yesterday was a pretty sight, in the estimation of the Holland Society, but as the "celebration of the landing of the original Dutch settlers, 250 years ago," it was about thirteen years out of the way, according to Edward Van Winkle, recording secretary of the Holland Society of New York.

The city officials and school children gathered to commemorate the landing of Peter Minuit on May 4, 1626, believed they were celebrating the landing of the first Dutch Governor, who bought Manhattan Island from the Indians for sixty dollars' worth of cloth and beads, but records dug up by the Holland Society seem to prove that there had been three previous Governors who, while not buying the island outright, had nevertheless made presents to the red men to leave the Dutch settlers alone.

600 Children Celebrate.

Notwithstanding the historical data of the Holland Society, the flag raising took place according to programme. Six hundred children from Public Schools 1, 21, 23 and 29 marched to the Battery led by the uniformed band of School 21. Each child wore a white waist or middie blouse and carried the city flag of blue, white and orange. Then as the band struck up Victor Herbert's "The Orange, White and Blue," dedicated to the school children of New York, all joined in singing the words by John B. Pine.

George McAneny, on behalf of the City Flag Committee, presented a new city flag, 12 by 20 feet, to Borough President Pounds, of Brooklyn, who represented Mayor Mitchell and the city. The flag was presented to the school children of School 21, pulled the banner slowly up the pole while the children waved their flags and sang "America."

Seated on the platform besides President Pounds and Mr. McAneny were Park Commissioner Ward, Dr. George F. Kunz, John B. Pine, Dr. George F. Kunz, John B. Golden, of the School Board; District Superintendent John R. Roberts; School Commissioner P. R. Roberts; and Principals Mary R. Davis, James Reardon and Magnus Gross. The committee of which Mr. Pine is chairman is raising money to provide city flags for all the schools, and has already supplied standards for two hundred.

Settlers of 1626 Not First.

"It was absurd to commemorate the landing of the first Dutch settlers, May 4, 1626," said Edward Van Winkle, May 4, 1626, "the Dutch Governor of New Netherland Society," "when two hundred souls had preceded them. Our family was established here long prior to that date. Ship building had been going on since 1614, and the established as early as 1614, and cattle, horses and sheep were here and an agricultural settlement complete, with eight company bouwerijs in operation in July, 1626, the Het Meeweste (the Little New), sometimes called Meewuiken (Seamew), brought Peter Minuit, a Walloon of Wesel, in Germany, the fourth Dutch Governor of New Netherland, he having received his appointment from the Dutch West India Company in the fall of 1625. When that ship arrived there were 200 souls living in the colony."

Settlement on Manhattan in 1613.

"As early as the month of November, 1613, Captain Argal, of Virginia, found a settlement on the island of Manhattan, occupying four houses, with a pretended Dutch Governor, O'Callaghan's history of New Netherland, page 69; Manhattan in 1628, pages 170-171, recording the first male child, born here in 1615; and Memoirs of the Long Island and Historical Society, Volume I, page 114."

This Governor was Hendrick Corstiaensen, who received his appointment from the New Netherland Company and was active here in 1613. Corstiaensen, who died in 1619, was the second Dutch Governor, with thirty families, arrived in 1623, with Verhulst (William Van Hulst), the third Governor, in 1624, and Peter Minuit in 1625.

"This incorrect historical function and the raising of the inconsistent city flag with its date of 1624 and the eagle that could not date before 1776, will be looked upon by historians as a monument to the stupidity of all those who took active part in creating the confusion that is bound to be in the minds of these school children when they come to face with the authoritative historical facts."

2,064 TONS OF FOOD SENT TO BELGIANS

Red Cross Aid Since Winter Began Far from Sufficient.

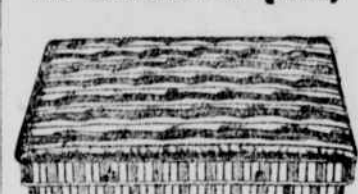
Since the winter campaign began the Commission for Relief in Belgium has sent to the stricken country and its three million destitute citizens 4,129,008 pounds of food and 441,633 pounds of new cloth and ready-to-wear clothing. Yet only one-tenth of the suffering men, women and children could be relieved by this contribution.

New York State led in the amount contributed. Of the food it sent 2,816,200 pounds, and of cloth \$7,118 pounds. The cloth not only serves to cover the bodies of the unfortunate Belgians, but it also gives many of them employment by the commission in turning the material into clothes.

The uptown branch of the American Red Cross sent five cases of hospital materials to France during last week. Two were sent to Italy and one was held for the home reserve. Contributions for the last seven days amounted to \$425.87.

Miss Mabel Boardman, of the central committee of the Red Cross, said yesterday if New York City threw itself into the Red Cross's campaign for a million needy Belgians as wholeheartedly as other cities have done 115,000 citizens would join the organization in the next month.

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\$200,000 HEIRESS MAY CHANGE MIND

Miss Kitching Admits She Is "On the Fence" as to "Tainted" Fortune.

MORAL MANUSCRIPT GUARDED CLOSELY

Niece of "Miser" Receives Volumes of Suggestions and Advice from Outside.

The asphalt in Bank Street sizzled in the heat of a hot spring sun yesterday afternoon. The sidewalk on the left hand side was studded with tracks, all pointing directly to the front door of No. 24. A similar trail led away from the house.

The two revealed hope, discouragement and maybe despair and gave proof of the popularity of Miss Edith Kitching since she fell heir to her Uncle Ripley's "tainted" \$200,000.

Bank Street Popular Now.

Bank Street has become popular since the little white haired woman with the pink cheeks scornfully refused the money she terms "tainted" from the relative she stamps a "miser." The bustling little landlady who answers the bell, and who is the personification of suspense, pending the disposal of the fortune, is kept in a near state of fatigue climbing the basement stairs, answering rings for her best roomer.

Young and old, fat and thin, short and tall, callers come seeking an interview, which is always denied. Each mail brings volumes of advice and suggestions. Yesterday was particularly busy.

Miss Kitching sat in her little hall bedroom on the second floor. Lace curtains fluttered at the open window. Her sandalled feet peeping from beneath her hygienic woolen dress, the little woman crouched before her trunk, laboriously writing. On the floor was a tin plate containing five rusty apples. Usually there are six, but yesterday, when Miss Kitching's Uncle Ripley's fortune had been munched an apple before the hour appointed.

"Being Advised" About Money.

"It happens very seldom," she said, "usually I don't eat my daily meal until about 5 o'clock. But I was hungry to-day, so I had an apple."

She closed the door and writing pad, jealously covering the manuscript of this great subject for publication," she said firmly.

"But are you going to take the 'tainted' money?" was her guarded reply, "and all I can say is that I am on the fence."

REFUSES BROTHER'S \$9,500.

Mrs. Tobey Has Codicil Placed in J. M. Lincoln's Will.

Perhaps it has happened before, but there is no record of it in the Surrogate's Court. The will of James Minor Lincoln, who died on March 28, at Wareham, Mass., died yesterday, left \$9,500 to his sister, Mrs. Mary Moore Tobey, of Palo Alto, Cal.

And the will was accompanied by a codicil, drawn at the request of Mrs. Tobey, revoking the bequest. Mr. Lincoln left an estate of about \$14,000, which goes to his wife and two infant children.

VETO ASKED ON P. S. C. BILL

Commissioners Say Measure Shows "Interest in Some Special Case."

A memorandum urging Governor Whitman to veto the bill of Senator Horton, of Buffalo, which amends the Public Service Commission law in relation to the approval of transfer of capital stock, was forwarded yesterday to the Governor by the Public Service Commission. The memorandum said that the bill was objectionable and that it appeared to have been drafted by some one having in mind "some special case." Under the bill stock corporations not subject to regulation by the commission would obtain the right to hold more than 10 per cent of the stock of certain public service corporations, but under the present law is 10 per cent.

Y. M. C. A. MEN OFF FOR WAR

Two Leave Brooklyn Branch to Join Allies at Front.

George S. Lockington and Harold Wetmore, two Y. M. C. A. secretaries, attached to Brooklyn, left for the front yesterday. Lockington went on the Ordnance to enter a training camp in England. He will be joined later by George Kelson Young and another member. He is social secretary of the Boys' Branch, at 429 Gates Avenue. Previous to his connection with the work in Brooklyn he was in Sydney, Australia, in the same field.

Wetmore went to Canada yesterday, where he will stay for a month before sailing for Europe. He was assistant physical director at the boys' building and came to Brooklyn from St. John, New Brunswick.

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FAY ADMITS HE IS A DESERTER

TNT Mine That Prowled by Night, Then Sank at Dawn, His Dream.

Lieutenant Robert Fay yesterday established his reputation as an inventor of romances. This was done with the aid of John C. Knox, Assistant United States District Attorney, in the cross-examination of the bomb maker before Judge Howe in the United States Circuit Court.

Fay said that the "confessions" he made to the police and to William J. Flynn, chief of the United States Secret Service, were "just rubbish," and the stories told to newspapermen "mere imaginings." But he added, the story he told now of being just a harmless inventor was true.

Fay Admits He Broke Oath.

"You are a deserter?" asked Mr. Knox.

"I am," said Fay.

"So that you broke your oath to the Kaiser?"

"Oh, that was just a ceremony."

"You used this trial as a loophole in the desertion charge, and now you want to use this so-called invention as a loophole in this trial, don't you?"

"I am anxious to get out of this trial. It is not a question of loopholes."

Fay said that he did not want to keep the trinitrotoluol in his house, and thus explained why he went with Carl L. Wetting, who sold explosives, to the woods to test it. He said if he found it explosive he would not keep it in the house.

"Then why did you keep dynamite, far more sensitive to explosion than the trinitrotoluol, if that is the case?" asked Mr. Knox.

Fay did not reply directly to this.

He declared that he did not receive \$4,000 from a high official in the German Secret Service to come here to conduct experiments in bomb making.

He said that the money was given to him by a man, whose name he would not give, to conduct some automobile experiments.

Embezzled Money for Tests.

"But you used it in connection with bomb experiments solely, didn't you?" asked Mr. Knox.

"Yes."

"So you embezzled the money?"

"You may call it embezzlement."

Fay then told of working on an invention that he had not previously discussed. He said the invention was a submarine mine that would sink during the day and rise at night, thus avoiding mine sweepers in the day, and be ready to sink any vessel that tried to steal through a channel after dark.

"Will you tell this jury just how this mine works?" asked Mr. Knox.

"If a United States naval officer comes here with the money to pay for the invention and lays the money on the table, I'll answer that question, not before," said Fay.

Mr. Knox forced the prisoner to admit that he had purchased two lots of chlorate of potassium. One, it was brought out, he obtained from Paul Siebs, a government witness.

"Where did you get the second lot?" asked Mr. Knox.

"I refuse to answer, on the ground that it might tend to incriminate me," said Fay.

Fay's brother-in-law, Walter Scholz, also testified in his own behalf, and corroborated the essentials of Fay's story.

The third defendant, Paul Daech, had just completed his direct examination when adjournment was taken for the day. Daech said he went to school with Max Breitung, and thus counted for calling on him when he came to this country to enter business and study American business methods.

FIREMAN'S NEW EXCUSE DOESN'T SAVE HIS JOB

Shields's Barren Island Tale Fails to Convince Commissioner.

It was getting dark on Barren Island, and Frank Shields, a New York fireman, and a friend, convinced that the island was a very spot, went back to where they had moored their row boat. It was gone! But a fireman's equal to any such emergency. Finding an old skiff with a broken oar, Shields began paddling for Flatlands.

It was a rough night, and that little old skiff took in water so fast that Shields and his friend had to desert the paddle for a tomato can to bale her out. It neared midnight, and the two were about to make a swim of it when a fishing schooner hove in sight. Exhausted, they were rescued, and rushed to the nearest saloon in Flatlands, where, despite Shields's protests, his mouth was just forced open and most of a quart bottle of whiskey poured into it.

"Credit for originating a new excuse for intoxication while on duty is due you, Shields," Fire Commissioner Adamson said yesterday in the trial room at Fire Headquarters, "and that may be some consolation to you while looking for a job. I find you guilty of the intoxication charge made by your commander, Captain Howe, of Truck 9, on April 22, and dismiss you from the Fire Department."

OSBORNE WINS COURT POINT

Jury Upholds His Dismissal of Gao at Sing Sing.

Former Warden Thomas Mott Osborne of Sing Sing won point yesterday when a jury in Justice Meachester's part of the Supreme Court at White Plains, brought in a verdict against Hugh H. Sullivan, of Yonkers, who sought reinstatement as a guard at Sing Sing.

Sullivan sued on a writ of certiorari on the ground that he was a Spanish war veteran, and that Warden Osborne had no right to discharge him unless charges were preferred and a trial held. Mr. Osborne testified that Sullivan had offered his resignation after he had been charged with being intoxicated.



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